IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO. 398 OF 2005
IN
ARBITRATION PETITION NO.8 OF 2005

L & T Finance Ltd. .. Appellant

v/s.

Mr.K.G. Harish,
Proprietor of Harish Timbers &
Cauvery Earth Movers & ors. .. Respondents

Ms.Shakuntala Joshi for the appellant.

CORAM : R.M. LODHA AND
J.P. DEVADHAR, JJ.

DATED : 27th June, 2005

P.C.

Heard Ms.Shakuntala Joshi, the learned counsel for the appellant.

2. The learned Single Judge observed that the Arbitral Tribunal was in place and the proceedings before the Arbitral Tribunal were pending and there being no explanation on the part of the petitioner (appellant herein) in not making an application under section 17 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996') before the Arbitral Tribunal, this was not a fit case for invocation of the petition under section 9.

3. The learned Single Judge though observed that the application under section 9 of the Act of 1996 was maintainable but in view of the fact that

petitioner (appellant herein) had not chosen to approach the Arbitral Tribunal for interim relief refused to invoke section 9 of the Act of 1996.

4. We hardly find any illegality in the approach of the learned Single Judge. The Arbitral Tribunal is seized with the dispute and shall be in a position to consider whether the case for grant of interim measure during the pendency of arbitration proceedings is made out or not. The jurisdiction of the court under section 9 of the Act of 1996 in passing the interim order is not in doubt. It can be exercised before the arbitration proceedings have commenced or during the arbitral proceedings or after making of the arbitral award but before it is enforced in accordance with section 36 of the Act. However, the tendency of invoking the jurisdiction of the Court routinely under section 9 of the Act of 1996 during the pendency of arbitral proceedings when the Arbitral Tribunal could also pass appropriate interim order should not be encouraged. In the present case, the petitioner (appellant herein) did not make any application before the Arbitral Tribunal under section 17 of the Act. The fact that the Arbitral Tribunal is in place is not questioned. There is nothing on record to show that the respondent was not agreeable in consideration of the matter of interim relief by the Arbitral Tribunal. In this view of the matter if the learned

Single Judge held that no case for invocation of jurisdiction under section 9 was made out, the impugned order cannot be faulted.

5. We find from the proceedings that by the order dated 2nd May, 2005, this court had passed the ad-interim order. In our considered opinion, the said ad-interim order may be continued for two months to enable the appellant herein to apply to the Arbitral Tribunal for appropriate interim relief. We order accordingly.

6. With the aforesaid observations, appeal is disposed of.

7. We clarify that in case the respondent does not agree for consideration of the application for an interim measure by the Arbitral Tribunal, the appellant shall be at liberty to approach this court afresh under section 9 of the Act of 1996.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)